

REMARKS

I. Introduction

Claims 7 to 16 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicant notes with appreciation the acknowledgment of the claim for foreign priority and the acknowledgment that all certified copies of the priority documents have been received.

II. Rejection of Claims 7 to 16 Under 35 U.S.C. § 102(b)

Claims 7 to 16 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,357,438 (“Davidian”). It is respectfully submitted that Davidian does not anticipate the present claims for at least the following reasons.

To anticipate a claim, each and every element as set forth in the claim must be found in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). In other words, to be anticipatory, a single prior art reference must show all of the limitations of the claims arranged or combined in the same way as recited in the claims. Net Moneyin, Inc. v. Verisign, Inc., 545 F.3d 1359 (Fed. Cir. 2008).

Claim 7, as presented, relates to a device for providing a fatigue warning to a driver in a controlled motor vehicle traveling on a roadway, including, *inter alia*, the features of a *driver sensor system for detecting a driver fatigue condition*, and an alarm system configured to one of output a warning signal and perform a control action when a distance between the controlled motor vehicle and a preceding vehicle drops below a warning distance, *the warning distance being defined initially by a setpoint time gap*, in which *the setting device of the alarm system is configured to modify the warning distance as a function of the detected*

driver fatigue condition. Support for the amendments to claim 7 may be found in the Substitute Specification, e.g., at page 5, line 13 to page 6, line 22; and Figure 2.

Davidian does not disclose, or even suggest, all of the claimed features of claim 7, as presented. For example, Davidian does not disclose, or even suggest, the feature of a *driver sensor system for detecting a driver fatigue condition*. Instead, Davidian merely refers to **presetting** a reaction time parameter using keys 30, by which a driver manually preselects a reaction time. Col. 5, lines 34 to 43; col. 8, lines 64 to 66; col. 12, lines 17 to 18; and col. 15, lines 1 to 3. Further, Davidian merely describes a driving ability test that must be satisfactorily completed by a driver **before** the vehicle can be started. Col. 6, line 47 to col. 7, line 13; and col. 10, lines 9 to 15. Thus, Davidian merely refers to preselecting parameters and completing tests prior to driving, both of which must be manually completed by a driver. However, nowhere does Davidian disclose detecting a driver fatigue condition by a driver sensor system. Accordingly, Davidian does not disclose, or even suggest, the feature of **a driver sensor system for detecting a driver fatigue condition**.

Further, Davidian does not disclose, or even suggest, the features of *the warning distance being defined initially by a setpoint time gap, and the setting device of the alarm system configured to modify the warning distance as a function of the detected driver fatigue condition*. Instead, Davidian merely describes a system which operates in two distinct modes: a Collision Danger mode of operation, and a Constant Distance mode of operation. Col. 6, lines 6 to 18; and col. 9, lines 3 to 13. In the Collision Danger mode of Davidian, a collision distance is calculated based on preset parameters, whereas in the Constant Distance mode, a fixed distance is input by a driver. However, each of these modes of operation is completely **distinct** and **unrelated** to the other. Thus, the calculated collision distance is completely unrelated to the manually input fixed distance. Further, contrary to the assertion of the Office Action at pages 2 to 3 that “[i]t is inherent that a time gap would be required in an equation to determine the rate of distance decrease,” it is respectfully submitted that Davidian plainly describes that its collision distance in Collision Danger mode is calculated without any reference to a distinct fixed distance used for Constant Distance mode. Therefore, nowhere does Davidian disclose that a warning distance is defined initially by a setpoint time gap. Accordingly, Davidian does not disclose, or even suggest, the feature of **the**

warning distance being defined initially by a setpoint time gap. Further, since Davidian does not disclose the feature of a driver sensor system for detecting a driver fatigue condition, Davidian also does not disclose, or even suggest, the feature of the setting device of the alarm system configured to modify the warning distance as a function of the detected driver fatigue condition.

Therefore, Davidian does not disclose, or even suggest, the features of *a driver sensor system for detecting a driver fatigue condition*, and an alarm system configured to one of output a warning signal and perform a control action when a distance between the controlled motor vehicle and a preceding vehicle drops below a warning distance, *the warning distance being defined initially by a setpoint time gap*, in which *the setting device of the alarm system is configured to modify the warning distance as a function of the detected driver fatigue condition*, as provided for in the context of claim 7.

Accordingly, Davidian does not disclose, or even suggest, all of the features included in claim 7, as presented. As such, it is respectfully submitted that Davidian does not anticipate claim 7.

As for claims 8 to 16, which ultimately depend from and therefore include all of the features included in claim 7, it is respectfully submitted that Davidian does not anticipate these dependent claims for at least the same reasons more fully set forth above.

In view of all the foregoing, withdrawal of this rejection is respectfully requested.

III. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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